

BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: January 21, 2004

Division: Growth Management

Bulk Item: Yes No X

Department: N/A

AGENDA ITEM WORDING: Approval of a Resolution expressing support for a partnership with the Florida Department of Community Affairs (DCA) to meet the State's and County's obligations under Rule 28-20.100, Florida Administrative Code and the County's Year 2010 Comprehensive Plan; committing the County to specific implementation actions; requesting reciprocal commitments from the DCA; and directing County staff to prepare an interim moratorium ordinance pursuant to guidance from legal counsel.

ITEM BACKGROUND: On January 6, 2004, the Board of County Commissioners met in a special workshop meeting with DCA Secretary Colleen Castille and her staff to resolve concerns raised by the DCA and the Governor and Cabinet about the lack of substantial progress by the County on the Work Program required under Rule 28-20.100 (F.A.C.). The primary issue that remained to be negotiated was "habitat protection".

At that meeting the Growth Management Division presented a conceptual proposal for a cooperative agreement that addressed the habitat protection issue and presented in more detail actions taken by the Board on December 10, 2003, regarding funding for wastewater construction, acquisition of environmentally sensitive lands and affordable housing sites, and need for more affordable housing ROGO allocations. The Growth Management litigation counsel presented the Board with a legal paper outlining provisions required for any moratorium ordinance to be legally defensible.

After staff and public testimony, and dialogue between the Board and Secretary Castille, the Board deliberated and voted to approve the conceptual proposal offered by staff with an amendment to the proposed habitat protection provisions of the conceptual proposal. The Board voted to support a moratorium on any new ROGO/NROGO allocations in upland native vegetated habitat of 2 or more acres within designated Conservation and Natural Areas. The attached resolution reflects that action taken by the Board and directs staff and legal counsel to prepare the necessary ordinance to enact the moratorium.

PREVIOUS RELEVANT BOCC ACTION: Approved conceptual proposal on January 6, 2004

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Approval

TOTAL COST: **BUDGETED:** Yes No
COST TO COUNTY: N/A **SOURCE OF FUNDS:**

REVENUE PRODUCING: Yes No **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty X OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

DOCUMENTATION: Included X To Follow Not Required

DISPOSITION: **AGENDA ITEM #** J-2

County of Monroe


Growth Management Division
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Board of County Commissioners
Mayor Murray Nelson, District 5
Mayor Pro Tem David Rice, District 4
Comm. Charles "Sonny" McCoy, District 3
Comm. George Neugent, District 2
Comm. Dixie Spehar, District 1

MEMORANDUM

TO: Board of County Commissioners

FROM: Timothy J. McGarry, AICP
Director of Growth Management 

DATE: January 15, 2004

SUBJECT: **Resolution on Cooperative Agreement with the DCA and
Moratorium on Upland Vegetative Habitat (Tropical
Hardwood Hammock and Pinelands)**

Overview

The Board of County Commissioners is asked to adopt a resolution that ratifies its preliminary decision made at a January 6, 2004, special meeting to approve a "Conceptual Proposal for a Cooperative Agreement between the DCA and Monroe County to Address Significant Outstanding Work Program Issues". The Growth Management Division staff with assistance of its legal counsel has prepared a draft resolution for consideration by the Board that approves a paper entitled "Cooperative Agreement between DCA and Monroe County to Address Significant Work Program Issues", based on the previous action taken by the Board.

Background

At a January 6, 2004, special workshop meeting with the DCA Secretary Colleen Castille, the Board approved with revisions a conceptual proposal for a cooperative agreement between the DCA and Monroe County prepared by the Growth Management Division staff. A significant element of the Board's deliberations and dialogue with Secretary Castille regarded a temporary moratorium on new ROGO/NROGO allocations in environmentally sensitive upland habitat until such time amendments can be made to the County's Comprehensive Plan and Land Development Regulations to better protect environmentally sensitive habitat.

The Board discussed three main options for a moratorium that involved Conservation and Natural Areas and a fourth option proposed in the draft conceptual proposal prepared by staff that modified a moratorium on high quality hammocks (Option #3) by including a moratorium on all native

upland vegetated lands of four or more acres regardless of quality. After a suggestion by Secretary Castille that she would prefer a minimum of one acre or more to be covered by the moratorium, Commissioner Spehar offered a two-acre or more minimum as a compromise from the proposed four-acre minimum. In addition, the wording of the description of the habitat subject to the moratorium was revised to "native upland vegetated land". The Board then approved the proposed conceptual agreement that commits the County to a moratorium on new ROGO/NROGO awards in areas containing two or more acres of native upland vegetated land.

Subsequent Events

Unfortunately, immediately after the January 6, 2004, meeting, the Growth Management Division staff became aware in discussions with members of the environmental community that there may be some misunderstanding of Board's action by Secretary Castille. This concern was confirmed by the DCA staff and in an exchange of e-mail with Secretary Castille.

Subsequently, Secretary Castille sent a letter to the Commission (attached), which clearly spells out her interpretation of the Board's action. In her letter, Secretary Castille states that she believes that the Board voted for an interim moratorium on all areas containing two acres or more of native upland vegetative habitat throughout the County, not just within Conservation and Natural Areas.

The Growth Management Division does not believe that the Secretary is correct in her interpretation of the events as the Board never discussed any options that involved a moratorium outside of the Conservation and Natural Areas. The official minutes from the meeting support the staff's position. Therefore, the staff and legal counsel has prepared a resolution that is based on this official reading of the Board's action with the full understanding that this issue will be officially settled by the Board on January 21, 2004.

Staff Evaluation of Secretary Castille's Letter of January 13, 2004

In her letter to the Commission, Secretary Castille indicated that the Growth Management Division Director had agreed to use the data available from the Florida Natural Areas Inventory and Fish and Wildlife Conservation Council to identify the habitat areas to be protected by the moratorium. Although the Director agreed to utilize these maps at the January Commission meeting, upon further review by staff, concerns were raised about the scale of these maps and their suitability for application to individual parcels and lots.

The staff would rather rely on the Florida Marine Resource Institute's ADID maps, supplemented by the most recent aerial photographs and site visits; however, the County staff does not believe this is a major issue and is willing to work with the DCA on any set of habitat maps as long as they are at a suitable scale. The major issue is not about maps, but whether or not the moratorium should be expanded to include habitat outside of the Conservation and Natural Areas.

The Secretary's call for a moratorium on permit allocations in areas containing two or more acres of native upland vegetated land, which she now recommends to be defined as "tropical hardwood hammock and pinelands", causes concern for the County staff. Her proposal conflicts with the

position she advanced in her letter to the Board of November 10, 2003, that calls for applying negative [ROGO/NROGO] points to properties located only within Conservation and Natural Areas.¹

No mention is made in the Secretary's November letter regarding any upland habitat outside of Conservation and Natural Areas, which is one reason the staff only drafted various options for moratoria solely within the boundaries of these designated areas. Her interpretation regarding the needed scope of the moratorium begs the question: "What conditions or assumptions have changed since November that warrant an interim moratorium and special habitation protection outside of the County's current strict regulations for habitat situated outside of the Conservation and Natural Areas?"

It should again be noted that the building block for designation of Conservation and Natural Areas was based on the four-acre minimum of upland habitat considered by the experts who did the Florida Keys Carrying Capacity Study as the minimum threshold for a viable habitat. The designation of the boundaries took into consideration the need for buffers, opportunities for connectivity of isolated patches through restoration and re-growth, distribution of developed lands, presence of canals, etc. Within these boundaries are small patches of habitat between two to four acres in size or smaller.

Any small isolated patches of upland habitat outside of these areas are not considered to have long-term viability as habitat of any regional, state, or national importance, but may be of neighborhood or local importance. These patches are isolated, impacted by development, and/or can not be connected with other habitat areas, therefore, they did not warrant being designated within Conservation and Natural Areas. This policy decision is directly supported by the science in the Florida Keys Carrying Capacity Study and corroborated by the County's consultant, Dr. Ricardo Calvo, who was the project director for that study.

The County's Growth Management Division staff believes the current regulations, supplemented by minor regulatory revisions and land acquisition programs will help preserve those small isolated patches that may be of significance to local neighborhoods. Therefore, the staff believes it would be inappropriate to place any type of moratorium on upland habitat outside of the designated Conservation and Natural Areas, as such a moratorium would conflict with the policy basis for the establishment and designation of the Conservation and Natural Areas and good environmental science.

¹ The staff's preliminary analysis indicates that approximately 154 acres of privately-owned tropical hardwood hammock and pinelands in patches of two acres or more are located outside of Conservation and Natural Areas, excluding Big Pine Key and No Name Key. As the maps used to identify these areas are more than ten years old, the staff will need to review each patch based on the most recent aerial surveys and site visits. With the development and further fragmentation of these patches that has occurred since the habitat maps were prepared, the number of acres of tropical hardwood hammock and pinelands within patches of two acres or more will be significantly reduced upon closer examination. The staff is conducting this research and expects to have this information available at the Commission's meeting on January 21, 2004.

To expand a moratorium to include habitat that is of local significance with little long-term viability or value for sustainability of protected species and maintenance of ecosystem integrity may seriously undermine the legal and public policy basis for the moratorium. The staff believes that no public interest is served by placing a moratorium on development within areas, which in all likelihood would not be significantly affected by proposed amendments in the habitat protection regulations expected to be enacted at the end of the moratorium.

Staff Response to Secretary Castille

As stated previously, the staff does not recommend expanding the moratorium to include any habitat outside of Conservation and Natural Areas. However, in consultation with the County Attorney and legal counsel, the Board may want to consider as a sign of good faith to Secretary Castille to make further commitments to accommodate her concerns without undermining the County's legal and policy position.

The staff suggests that the Board of County Commissioners may want to consider including the following additional commitments in its proposed partnership:

- o County's Land Authority will target for voluntary purchase appropriate hardwood tropical hammock and pinelands of two or more acres located outside of the designated Conservation and Natural Areas and commit to setting aside up to \$1 to \$2 million in funds reserved for acquisition of land under ROGO for this purpose.
- o County will entertain proposals from the DCA for amendments to the boundaries of the Conservation and Natural Areas to protect significant tropical hardwood hammock and pinelands that may have been inadvertently left out of the initial boundary designation. [The proposed resolution calls for the County Growth Management Division staff to review the existing boundaries of the Conservation and Natural Areas and provide opportunity for public input prior to adoption of the moratorium ordinance. The maps will be included as part of the moratorium ordinance.]²

Proposed Resolution

The draft resolution prepared by the Growth Management Division staff for consideration by the Board is based on the conceptual proposal as tentatively approved by the Board on January 6, 2005. Exhibit One of the resolution contains the revised conceptual proposal, now entitled "Cooperative Agreement between the DCA and Monroe County to Address Significant Work Program Issues".

² The Growth Management Division staff intends to have its consultant Dr. Ricardo Calvo review the existing boundaries of the Conservation and Natural Areas to recommend any needed boundary amendments prior to the Board's action on the moratorium.

Other than minor word changes, the staff has made the following changes to the initial concept proposal approved by the Board:

Commitments by the County

- o Habitat Protection, 1: As suggested by Secretary Castille the term “tropical hardwood hammock and pinelands” replaces the term “native upland vegetated land”. The staff had no problems with this change, which is more specific than the previous language.

Language has been included that specifically addresses the mapping resources to be used in determination of the lands to be covered under the moratorium. The maps to be used will be the habitat map series prepared by the Florida Marine Resources Institute, which were augmented by work of the Florida Department of Environmental Protection to form the basis of the County’s ADID maps. The information in this map series is in a GIS format. These maps will need to be supplemented by aerial photographs and site visits to ensure currency.

Commitments by DCA

- o Habitat Protection, 5: The wording has been revised to include an additional method for consideration by the DCA to resolve the County’s problem with its ROGO backlog due to lack of nutrient reduction credits. This option would allow any ROGO allocations be rolled over if nutrient reduction credits are not available. The roll-over option would not authorize permits to be released until nutrient reduction credits became available; however, the County would not be penalized by the loss of any future ROGO allocations.

The Board may also want to consider further revising the proposed “Cooperative Agreement” in Exhibit One by adding language or similar language proposed by staff in the previous section.

Recommendation

The staff recommends the favorable consideration of the proposed resolution, including additional language to accommodate some of the DCA’s concerns.

Attachment



STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

"Dedicated to making Florida a better place to call home"

JEB BUSH
 Governor

COLLEEN CASTILLE
 Secretary

January 13, 2003

The Honorable Murray Nelson
 99198 Overseas Highway, Suite 2
 Key Largo, Florida 33037

Dear Mayor Nelson:

I want to take this opportunity to thank you and the other members of the Board for their support at last week's meeting regarding the proposed cooperative agreement between Monroe County and the Department of Community Affairs. I was very pleased with the overall outcome and I truly believe that we are on the verge of accomplishing many great things by working together.

In that spirit of cooperation, I took the first step and withdrew the Notice of Violation as requested. I am now asking that we properly clarify the intent of the Board of County Commissioners related to the proposed moratorium on upland vegetated habitat. I clearly understood that the proposed moratorium would apply Countywide to all areas containing two or more acres of native upland vegetated habitat.

I specifically requested clarification regarding the motion and was informed by Commissioner McCoy that the proposed motion represented a hybrid of the six options approved by the County on December 10, 2003 and Option 3 from the conceptual paper provided by Tim Mc Garry further modified by Commissioner Spehar to include the two acre threshold of contiguous upland native habitat. As discussion progressed, I requested and Mr. Mc Garry agreed that the County would utilize data available from the Florida Natural Areas Inventory and the Fish and Wildlife Conservation Council to identify this habitat.

Commissioners Spehar and McCoy indicated the previous tier maps were not definitive or prioritized and that a precise description of lands subject to the moratorium would be essential. There was no verbal discussion of utilizing existing County maps identifying Conservation and Natural Areas, which were mapped, based on a minimum threshold of four-acre patches of contiguous hardwood hammock in addition to lands targeted for acquisition by the Department of Environmental Protection by the Florida Forever Program.

Subsequent to this meeting I received an email from Tim Mc Garry asking for clarification on this issue. He felt that the Board had intended to protect only that habitat located within Conservation and Natural area formerly referred to as Tier One. I believe that we must apply the

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COMMUNITY PLANNING
 2555 Shumard Oak Boulevard
 Tallahassee, FL 32399-2100
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EMERGENCY MANAGEMENT
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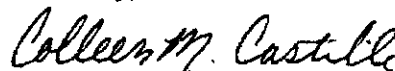
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Commissioner Nelson
January 13, 2003
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moratorium countywide to ensure the habitat protection consistent with the direction of the Governor and Cabinet. The taped results of the meeting support my position that the motion was to *institute an interim moratorium on ROGO and NROGO in areas containing 2 acres of native upland vegetated land*. In retrospect, I recommend that the language that will be finalized for the January 21 meeting not use the terms *native upland vegetated land*, but instead use the terms "Tropical Hardwood Hammock and Pinelands".

With regard to the full restoration of the County's building permit allocation, you may recall that I indicated that I needed to conduct additional research to ensure that the total number of permits proposed for allocation continue to fall within the parameters of the hearing officer's recommendations and our ability to safely evacuate citizens during hurricanes. I hope that we can quickly resolve these questions and move on with our conceptual agreement. I look forward to your response regarding this item.

Yours truly,



Colleen M. Castille
Secretary

cc: Monroe County Board of County Commissioners

RESOLUTION -2004

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA EXPRESSING SUPPORT FOR A PARTNERSHIP WITH THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS (DCA) TO MEET THE STATE'S AND COUNTY'S OBLIGATIONS UNDER RULE 28-20.100, FLORIDA ADMINISTRATIVE CODE, AND THE COUNTY'S YEAR 2010 COMPREHENSIVE PLAN; COMMITTING THE COUNTY TO SPECIFIC IMPLEMENTATION ACTIONS; REQUESTING RECIPROCAL COMMITMENTS FROM THE DCA; AND DIRECTING COUNTY STAFF TO PREPARE AN INTERIM MORATORIUM ORDINANCE PURSUANT TO GUIDANCE FROM LEGAL COUNSEL

WHEREAS, Monroe County is obligated to implement a Work Program as required by Rule 28-20.100, Florida Administrative Code; and,

WHEREAS, the Work Program is intended to provide guidance and a schedule of objectives that must be completed to implement the Monroe County Year 2010 Comprehensive Plan; and,

WHEREAS, the Work Program, the County's Year 2010 Comprehensive Plan, and Chapter 380, Florida Statutes, obligate the State in assisting the County; and,

WHEREAS, Rule 28-20.100 requires that the DCA, and the Governor and Cabinet, sitting as the Florida Administration Commission, annually review the progress being made by the County in accomplishing the objectives set forth in the Work Program; and,

WHEREAS, on December 16, 2004, the Florida Administration Commission upon the recommendation of the DCA, has determined that Monroe County has not made substantial progress toward meeting the objectives of Year 7 of the Work Program; and,

WHEREAS, the Florida Administration Commission has directed the DCA to prepare proposed rules to amend the County's Comprehensive Plan for the Commission consideration on January 27, 2004; and,

WHEREAS, after the December 16, 2004, Florida Administration Commission meeting, Secretary Castille reiterated her previous offer to secure grant funding assistance for wastewater construction, land acquisition, and affordable housing for

Monroe County and to form a partnership between the DCA and Monroe County to work toward satisfaction of Work Program goals; and,

WHEREAS, in an effort to reach agreement on a partnership between the DCA and Monroe County, Secretary Castille and the Board of County Commissioners met at a special Commission workshop meeting held on January 6, 2004; and,

WHEREAS, at that workshop meeting the Growth Management Division Director presented for discussion purposes a "Conceptual Proposal for a Cooperative Agreement between the DCA and Monroe County to Address Significant Work Program Issues" (the "Conceptual Proposal"), which modified the Growth Management Division report dated December 31, 2003, and recommended one of the six options for interim protection contained in that report; and

WHEREAS, the Board received and considered at the workshop meeting an opinion letter of Growth Management Division litigation counsel dated January 6, 2004 (a copy of which is attached hereto as "Exhibit Two" and made part of this resolution) that recommends inclusion of four specific provisions in a moratorium ordinance to make it legally defensible (the "legal recommendations"); and

WHEREAS, the Board of County Commissioners considered the recommendations of its Growth Management Division and Secretary Castille and approved the Conceptual Proposal in substance with revisions, including the legal recommendations; and

WHEREAS, both the Board and Secretary Castille recognize that the existing maps utilized to delineate the extent and location of Conservation and Natural Areas will require further refinement in order to protect valuable habitat and to avoid overbroad restriction on lands suitable for development, and that the public should have the opportunity to review and comment on the maps before they are incorporated into a moratorium ordinance and other growth management regulations; and

WHEREAS, the County Growth Management Division staff and its legal counsel prepared for Board consideration a "Cooperative Agreement between the DCA and Monroe County to Address Significant Work Program Issues" (the "Cooperative Agreement") based on the revised Conceptual Proposal as approved by the Board on January 6, 2004, with other minor revisions recommended by staff; and

WHEREAS, the Board of County Commissioners has considered the draft Cooperative Agreement and has received further public input at a special meeting held January 21, 2004;

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1: Monroe County commits to a cooperative relationship in the nature of a partnership with the Florida Department of Community Affairs, to accomplish the shared purpose of meeting joint obligations under Chapter 380, *Florida Statutes*, Rule 28-20.100, *F.A.C.*, and the Monroe County Year 2010 Comprehensive Plan.

Section 2: The Mayor of Monroe County is hereby authorized to execute the Cooperative Agreement which is attached hereto as "Exhibit One" and made part of this Resolution.

Section 3: The Cooperative Agreement is intended to link the respective commitments of Monroe County and DCA to achieve Work Program objectives of creating wastewater infrastructure, workforce/affordable housing, and habitat protection. The extent of the County's bonding commitments and financial expenditures corresponds to the State's performance in fulfilling its commitments under the Cooperative Agreement.

Section 4: The County Administrator shall direct the Growth Management Division with the assistance of legal counsel to prepare a Moratorium Ordinance for habitat protection in conformity with the Cooperative Agreement, incorporating therein the legal recommendations.

Section 5: The County Administrator shall direct the Growth Management Division to review and to propose appropriate revisions to the Conservation and Natural Areas maps, and in that process shall invite input from DCA and the public. The Conservation and Natural Areas maps, including proposed revisions thereto, shall be included in the public hearings on the Moratorium Ordinance.

Section 6: A copy of this resolution is to be transmitted by the Mayor to Secretary Colleen Castille, the Governor and Cabinet, Senator Bullard, and Representative Sorensen.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK.]

PASSED AND ADOPTED, by the Board of County Commissioners, Monroe County, Florida at a regular meeting of said Board held on the 21st day of January, A.D., 2004.

**BOARD OF COUNTY COMMISSIONERS
MONROE COUNTY, FLORIDA**

Mayor Murray Nelson

Mayor Pro Tem David Rice

Commissioner Charles "Sonny" McCoy

Commissioner George Neugent

Commissioner Dixie Spehar

BY: _____

MAYOR/CHAIRPERSON

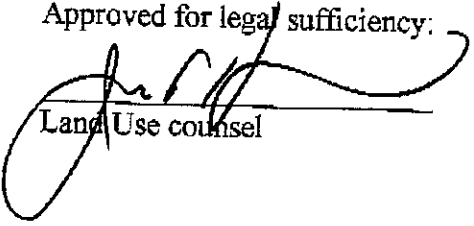
ATTEST: DANNYL K. KOLHAGE, CLERK

BY: _____

DEPUTY CLERK

Exhibits

Approved for legal sufficiency:


Land Use counsel